

Date of Hearing: July 3, 2013

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Ed Chau, Chair

SB 750 (Wolk) – As Amended: May 24, 2013

SENATE VOTE: 27-11

SUBJECT: Building standards: water meters: multiunit structures

SUMMARY: Mandates that water purveyors adopt policies requiring that newly constructed multiunit residential structures or mixed use residential and commercial structures that apply for water connections after January 1, 2014, have, as a condition of new water service, submeters that measure the water supplied to each individual dwelling unit. Specifically, this bill:

- 1) Includes intent language.
- 2) Requires that meters or submeters be of types or designs which have been approved in accordance with state rules and regulations governing devices that weigh and measure.
- 3) Requires that meters or submeters be installed and operated in compliance with state regulations governing the tolerances and specifications for measuring devices.
- 4) Provides that a water purveyor cannot be required to assume responsibility for ensuring compliance with any law or regulation governing installation, certification, maintenance, and testing of water submeters associated with outside plumbing.
- 5) Provides the following types of housing that are excluded from the requirements:
 - a) Low-income housing;
 - b) Student dormitories;
 - c) Long-term health care facilities;
 - d) Time-share properties;
 - e) Residential care facilities; and
 - f) A structure that is greater than four stories, if the owner or his or her agent demonstrates to the satisfaction of the water provider that the structure's plumbing configuration incorporates multiple points of entry in each dwelling unit that renders the installation of the submeters infeasible.
- 6) Includes the following definitions:
 - a) "Low-income housing" means a residential building financed with low-income housing tax credits, tax-exempt mortgage revenue bonds, general obligation bonds, or local state or federal loans or grants provided to residents with low incomes as defined and will deed

restrictions, and for which not less than 25% of the dwelling units in the building are designated for occupancy by lower-income households;

- b) "Billing agent" is a person or entity that contracts to provide submetering services, including billing, to a landlord;
 - c) "Landlord" means all agents of the landlord, billing agents, successors in interest to the real property interests of the landlord. "Landlord" does not include a tenant who rents all or a portion of a dwelling unit to subtenants or a common interest development;
 - d) "Property" means real property containing two or more dwelling units that are served by a single meter;
 - e) "Rental agreement" includes a fixed-term lease;
 - f) "Renting" includes leasing whether on a periodic or fixed-term basis;
 - g) "Submeter" means:
 - i. a device that measures water consumption of an individual rental unit within a multiunit residential structure or mixed-used residential and commercial structure, and which is owned and operated by the landlord; and
 - ii. includes submeters if more than one submeter is being used to measure water usage in a particular dwelling unit;
 - h) "Water service" includes charges for other services including sewage or storm water service that are based on the volume of water usage recorded by a water meter; and
 - i) "Water purveyor" means a water purveyor as defined in Water Code Section 512.
- 7) Provides a landlord may not charge tenants separately for water service in a property with submeters unless the submetering system is installed, operated, and maintained as follows:
- a) A submeter is certified for commercial purposes pursuant to law;
 - b) Installation conforms to all laws;
 - c) Installation was performed by a registered service agency;
 - d) The submeter is operated in compliance with established regulations;
 - e) The submeter for a dwelling unit measures only water that is supplied for the particular use of the dwelling unit;
 - f) The primary submeter indicator or remote reader may be easily accessed and read by the tenant of the dwelling unit and by the landlord without entering the unit;

- g) Each submeter is reinspected and recalibrated with the time limits specified in law or regulation; and
 - h) The plumbing fixtures conform to all laws regarding habitability of dwellings and water conservation.
- 8) Requires a landlord that intends to charge a tenant separately for water service to disclose the following to a tenant in writing in at least 10-point type prior to executing a rental agreement:
- a) The tenant will be billed for water usage separately from the rent;
 - b) The average bill for water usage for units at the property over the most recent calendar year or portion thereof, if the building is less than a year old;
 - c) The frequency of submeter readings;
 - d) The due dates and payment procedures for bills;
 - e) If a billing agent is used, the name, address, e-mail address, normal hours of operation, and toll-free number of the agent;
 - f) The date that the submeter was last tested and calibrated and the date by which it must be tested and recalibrated under law;
 - g) A statement that the tenant will be charged for water service at the exact rate or rates charge by the water purveyor;
 - h) A statement that the tenant will be charged for a portion of any recurring fixed charge billed to the property but the water purveyor and that the tenant's portion of the recurring fixed charge is the proportional amount of water the tenant uses in relation to the usage of the entire property;
 - i) The current amount of the recurring charge;
 - j) A statement that no other connection, disconnection, billing or other periodic fee or charge, except for an administrative fee, a late fee, or a submeter testing fee may be assessed;
 - k) If a landlord reserves the right to charge an administrative fee or late fee, the amount and terms of the administrative fee or the late fee; and
 - l) The location of the submeter and directions for the tenant to read the submeter
- 9) Allows a landlord to only bill a tenant for the volumetric usage of water and any fixed rate charge.
- 10) Prohibits a landlord from imposing any periodic, connection, termination or other fee, however denominated, except for administrative fees, late fees, or testing fees.

- 11) Provides that the amount of the water bill shall be calculated by multiplying the water volume as determined by the submeter for the billing period by the rate(s) for the volumetric usage established by the water purveyor for residential use.
- 12) Provides that if the rates established by the water purveyor change the tenant's bill shall be prorated to reflect the time each rate was in effect and the landlord has the option to assess the charges for the entire billing period at the lower rate.
- 13) Provides that if the beginning or ending submeter reading is not available, the landlord may bill the tenant 75% of the amount of the average bill for water usage disclosed to the tenant at the time the rental agreement is provided.
- 14) Provides that the landlord may not charge a tenant for any water usage if the readings have been unavailable for the last three months.
- 15) Defines "fixed charges" charged to a tenant as the proportion of the tenant's volumetric water use as shown on the submeter in relation to the water use of the entire property as shown on the property's water meter.
- 16) Requires the billing cycle for the tenant to match that of the water purveyor.
- 17) Requires that submeters be read within three days of the same point in each billing cycle.
- 18) Requires that bills must be due at the same point in each billing cycle, however bills will be due no earlier than ten days after mailing, if mailed, or five days after personal delivery.
- 19) Requires a tenant's water bills to include the following information:
 - a) The beginning and ending submeter readings, the dates read, and the indicated consumption;
 - b) The unit of measure for the readings and usage;
 - c) The rates charged per unit of measure;
 - d) The amount of the current charge for volumetric use;
 - e) The amount of any recurring fixed charge for water services billed to the property by the water purveyor;
 - f) The total water consumption for the property, as indicated by the property's water meter;
 - g) The percentage of total water consumed on the property that was consumed by the tenant;
 - h) The tenant's portion of the fixed charges;
 - i) A separate entry showing past due amounts;
 - j) A separate entry showing any previously-imposed late charges;

- k) The total amount due;
 - l) The due date for the bill;
 - m) A statement of the amount of late charges, if any, and when the late charges apply;
 - n) The name mailing address, e-mail address, telephone number, and regular business hours of the person or person that the tenant may call with questions regarding the bill; and
 - o) The name and telephone number of a billing agent if one is used.
- 20) Provides that if a tenancy begins or ends on a date more than three days from a normal reading, the submeter shall be read within three days of the beginning or end of the tenancy, and the first and last bills calculated accordingly.
- 21) Provides that a tenancy that begins or ends within three days of a normal reading may be billed based upon the normal reading for the first and last bills.
- 22) Prohibits a landlord from charging or allowing the following to be charged or recovered from a tenant:
- a) Any additional servicing, establishment, maintenance, meter reading, meter testing, billing or submetering fee or other fee including those charged by a billing agent;
 - b) Any fees billed to the landlord by the water purveyor, billing agent or any other person for any deposit, disconnect, reconnect, late payment or other similar fees; and
 - c) Any charges by the water purveyor not directly based on volumetric usage, including any base charges, customer service charges or monthly, bimonthly or other periodic charges assessed regardless of the volume consumed.
- 23) Provides that a landlord may recover the costs associated with the master metering system if they are incorporated into the rent for a dwelling unit, if the rent is a fixed amount per rental period, and the charges are not listed separately and the rental charges are otherwise lawful.
- 24) Requires a landlord to make the following available to a tenant upon request within seven days:
- a) All installation and maintenance records of the submeter in the tenant's dwelling unit, including the name, license number, and contact information of the registered service provider who installed or serviced the submeter;
 - b) The most recent test results of the submeter in the tenant's dwelling; and
 - c) The method and sources used to determine the rate at which the tenant is charged for water.

- 25) Provides that if a water system in a dwelling unit does not function properly including leaks, a fixture allowing unnecessary water consumption or a malfunction submeter the tenant may request the landlord repair the problem and the landlord must make the repairs within seven days.
- 26) Provides that a tenant may request that a landlord have a submeter tested for accuracy and the landlord must respond to the request within seven days and the test must be carried out as soon as practical.
- 27) Requires the test on a submeter must be performed by a licensed service provider or other person authorized by law to perform the test.
- 28) Provides if the test shows that the submeter is inaccurate, beyond the tolerances established by law, the landlord must repair or replace it.
- 29) Provides that if the test shows the submeter was indicating more usage than the true amount, beyond the established tolerances the landlord must refund the estimated overcharge to the tenant within 30 days of the receipt of the results.
- 30) Requires the landlord to pay for the cost of the test if either is true:
 - a) The tenant requests the test because the submeter has indicated that water usage has increased more than 25% for two consecutive billing periods over the previous three billing periods; or
 - b) The submeter is found to be inaccurate beyond the tolerances established by law.
- 31) Requires the tenant to pay for the test in all other cases up to a maximum of \$75.
- 32) Provides that a landlord is not required to test a submeter, if requested by a tenant, if the submeter was tested and found to be accurate within two years prior to the tenant's request and the landlord provides the written results to the tenant.
- 33) Provides that if a tenant pays for the cost of the test in advance then the landlord is required to perform the test.
- 34) Allows the landlord to charge an administrative fee for the actual cost of reading the submeter and providing billing service up to \$4 per submetered tenant per month for a water service bill totaling \$10 or more.
- 35) Allows a landlord to charge an administrative fee for the actual costs of reading the submeters and providing billing services of up to 40% of the water service bill per submetered tenant per month if a tenants' water service bill is \$9.99 or less.
- 36) Allows the administrative fee to be adjusted annual by the landlord commensurate with an increase in the Consumer Price Index, beginning January 1, 2017.
- 37) Permits a landlord to impose a late fee of up to 5% if a water bill is not paid within 20 days of the due date.

- 38) Provides that if the 20th day after a bill is due, falls on a weekend or holiday the late fee may not be imposed until one day after the extended time for a payment.
- 39) Provides that if a bill goes unpaid, the landlord may in lieu of a late fee deduct the amount from the security deposit and then require an additional payment of security following the deduction.
- 40) Provides that a landlord may deduct the last water payment from the security deposit at the end of a tenancy if the landlord provides documentation of the deduction and all other requirements of the security deposit are met.
- 41) Provides that if a bill remains unpaid for 30 days, the nonpayment constitutes a curable breach of a material lease obligation and the landlord may take action in court to remedy the breach.
- 42) Provides that water charges do not constitute rent.
- 43) Prohibits a landlord from shutting off the water or otherwise interfering with a tenants water services for any reason including nonpayment of a bill.
- 44) Provides that in addition to any actual damages sustained by the tenant, for a violation by a landlord, the tenant may recover from the landlord three times the amount of actual damages, a civil penalty three times one month's rent, and reasonable attorney's fees and court costs.
- 45) Provides that a landlord is not liable for a civil penalty if the landlord proves that the violation was a good faith, unintentional mistake.
- 46) Provides that a city, county, or district may enforce the provisions of this bill.
- 47) Provides that the rights and obligations provided by this bill may not be waived and any waiver is void.

EXISTING LAW

- 1) Requires urban water suppliers, that do not get water from the federal Central Valley Project to install water meters on all municipal and industrial service connections and to charge each customer based on actual volume of water delivered.
- 2) Each water corporation with 500 or more service connections that is not already subject to water metering requirements under the existing Water Measurement Law must currently install a water meter on each new service connection and must retrofit each unmetered service connection by January 1, 2025.
- 3) Authorizes Building Standards Commission (BSC) to approve and adopt building standards. Every three years a building standards rulemaking is undertaken to revise and update the California Building Standards Code (Title 24 of the California Code of Regulations).

- 4) Provides that the Division of Measurement Standards (DMS) within the Department of Food and Agriculture (DFA) has general enforcement supervision of the laws relating to weights and measures and measuring devices, and provides for the enforcement of those laws and the inspection and testing of measuring devices in each county by the county sealer.

FISCAL EFFECT: None.

COMMENTS:

As the Pacific Institute highlighted in the report *Waste Not, Want Not: The Potential for Urban Water Conservation in California*, water conservation is the largest, least expensive, and most environmentally sound source of water to meet California's future needs. The installation of water meters on multiunit residential and mixed use commercial buildings has been shown to encourage increased conservation by making homeowners, business owners, or renters aware of the amount of water they are utilizing. Conceptually, this legislation is similar to a draft ordinance requiring submetering that was adopted by the City of San Diego on April 5, 2010. San Diego adopted its ordinance after a report from the City of San Diego Office of the Independent Budget Analyst found that multifamily units comprised 44% of the total housing in San Diego, the trend was increasing, and multifamily properties achieved a 15% to 39% water savings when submetered.

This bill would require installation of water submeters in all newly constructed multi-residential dwellings, for which an application for water connect is received, after January 1, 2014. This bill is prospective and does not require an owner of an existing multifamily dwelling to install submeters or retrofit existing submeters.

Billing and tenant protections:

This bill includes extensive consumer protections for tenants. A landlord may only charge a tenant for their actual water usage, any recurring fixed charges, and an administrative fee for billing costs. The fixed charge is determined by dividing the tenant's total water usage by the usage of the entire property. A landlord may charge a tenant an administrative fee for bills that are up to \$4 on water bills of \$10 or more. For water bills that are \$9.99 or less the landlord can charge a tenant up to 40% of the water service bill. This administrative fee was not in previous versions of this legislation.

Additionally, prior to entering into a new lease with a tenant, the landlord is required to provide a tenant in a submetered unit with various information including, the process for billing, contact information for the billing agent if one exists, the location of the submeter, and directions on how to read the submeter.

This bill only allows a landlord to charge a tenant for water, separately from the rent, if a water meter or submeter is installed, operated, and maintained in accordance with specified provisions. A submeter must be installed so that it can be easily accessed and read by a tenant and by the owner or landlord without entering the unit. This a requirement of the current regulations of the Department of Food and Agriculture (DFA), Division of Measurement Standards (DMS), which is responsible for testing, sealing, and regulating water and utility submeters that are used in the private commercial and residential settings in California.

Building standards process:

The California Building Standards Law establishes the BSC and the process for adopting state building standards. Statewide building standards are intended to provide uniformity in building across the state. The purpose of the building standards process is to address any issues regarding the health and safety of the standards and that in some cases the technology required to implement the standards is available on the market. DMS within the DFA oversees the testing submeters for accuracy. SB 750 requires submeters to be installed in conformity with all laws, be installed by a licensed provider and be operated in compliance with established regulations. The City of San Diego adopted an ordinance to require submeters in new apartment buildings without statewide building standards. The committee may wish to consider what if any additional consideration, the building standards process could provide that is not provided in the bill.

Concerns have been raised that water purveyors could charge a "hookup fee" to an owner of a building for installing a submeter. It is unclear if this practice occurs, but the committee may wish to clarify in the bill that this practice is prohibited.

Effect on existing local ordinances:

Several communities have adopted ordinances requiring submetering in multifamily dwellings. The committee may wish to consider an amendment to grandfather into law those ordinances that are adopted prior to January 1, 2014, the effective date of this bill. The committee may also wish to give water purveyors and local governments authority to adopt ordinances or programs that are more stringent than this bill.

Liability standard:

This bill sets significant penalties if a landlord is found to have violated the billing or notice provision for submetering. In part this is because a tenant has no meaningful redress should a submeter malfunction. Were the landlord regulated by the Public Utilities Commission, the tenant would have a forum for his or her concerns. No such forum is feasible for submetering systems. If the overage is only \$5 or \$10 a month, and the landlord is uncooperative, the tenant basically has the choice to either put up with it or move.

Several apartment associations have raised a concern that the standard the landlord must meet to avoid a civil penalty is too high. The bill requires the landlord to prove that the violations were a good faith, unintentional mistake. The committee may wish to consider amending this section to require the landlord to prove that the violation was in good faith and also not systemic and does not represent a pattern of abuse.

Arguments in Opposition:

The author is continuing to work with the opponents to address concerns. A remaining concern of the California Apartment Association (CAA) is how the late fee is applied and if it is sufficient. In addition, CAA is concerned that there may not be enough submeters available on the market to meet the demand when the bill takes effect January 1, 2014.

The Building Industry Association is neutral on the bill and working on amendments with the author to make the provisions of this bill operative through January 1, 2017 or until the Building Standards Commission adopts similar standards. The amendments would also give Department of Housing and Community Development authority to propose standards through the next update to the building standards or plumbing code but would not mandate them to propose them.

Arguments in Support:

According to the Natural Resources Defense Council, "water metering and volumetric pricing are essential tools to provide Californians with an accurate price signal regarding their water use. Over one-third of all California households live in multifamily housing and submetering ensures that all water users receive an appropriate signal regarding the volume and costs of their water series thus incentivizing residents to undertake responsible water use. Studies have shown that water submeters are associated with decreased water usage. The national Multiple Family Submetering and Allocation Study amount others found water savings of 15.3% when comparing submetered properties with rental properties that include water in rent. Another study showed water usage in sub-metered properties to be 18% to 39% less than in-rent properties."

Various water purveyors are in support of the bill. According to the Santa Clara Valley Water District, extending metering to multiunit residential structures is an important and necessary step if the state is to meet its goal of reducing urban per capita water use by 20% by the end of the decade.

Previous legislation:

AB 19 (Fong) of 2011 was substantially similar to this bill but did not include the administrative fee that is in this bill.

AB 1975 (Fong) of 2010 would have required the Department of Housing and Community to adopt building standards requiring installation of individual water meters and submeters in newly constructed multiunit residential buildings.

AB 1173 (Keene) of 2007 would have required submeters in multiunit residential structure built after January 1, 2010.

Committee amendments:

- 1) The following amendment prohibits a water purveyor from charging a fee to hookup a submeter:

A water purveyor shall not impose an additional capacity or connection fee or charge for a submeter that is installed by the owner or his agent.

- 2) The following amendment address the ability of a water purveyor or city, county or city and county to adopt a program that is more stringent that the provisions of this bill:

(c)(1) This section shall not restrict the authority of a water purveyor, city, county, or city, and other local agency to adopt and implement a program to promote water conservation that

includes the required installation of water meters or submeters for multiunit structures if such program is at least as stringent as the requirements of this section.

- 3) The following amendment grandfathers existing local ordinances and allows local governments to adopt an ordinance that is more stringent than the requirements of this bill.

Any ordinance that regulates the installation, approval of submeter type, maintenance, reading, billing, and testing of water submeters and associated onsite plumbing is not prohibited by this section provided either:

- (a) the ordinance was adopted prior to January 1, 2013; or,
- (b) the ordinance meets or exceeds the minimum requirements provided by this chapter.

- 4) Delete the requirement that landlords prove a violation as a good faith, unintentional mistake and rather require the landlord to prove it was in good faith and not part of a pattern of violations.

On page 10, delete lines 10 through 16 and insert:

In addition to actual damages sustained by a tenant for a violation of this chapter, the tenant may recover from the landlord three times the amount of actual damages, reasonable attorney's fees, and costs. The landlord may also be liable for a civil penalty of up to the one month's rent, unless the landlord shows that the violation was made in good faith and not part of a pattern and practice of violations of this chapter.

- 5) On page 11, delete lines 22 to 27.

Double referral: If SB 750 bill passes this committee, it will be referred to the Committee Water, Parks, and Wildlife.

REGISTERED SUPPORT / OPPOSITION:

Support

California Rural Legal Assistance Foundation (co-sponsor)
Natural Resources Defense Council (co-sponsor)
Western Center on Law & Poverty (co-sponsor)
California Advocacy Committee of the United States Green Building Council
California American Water
California League of Conservation Voters
California Municipal Utilities Association
California Water Association
Clean Water Action
East Bay Municipal Utility District
Environmental Defense Fund
Environmental Health Coalition
Housing Long Beach

Legal Aid Foundation of Los Angeles
League of Women Voters of California
Long Beach Water Department
Los Angeles County Board of Supervisors
Natural Resources Defense Council
Planning and Conservation League
Santa Clara Valley Water District
Sierra Club California
Sonoma County Board of Supervisors
Sonoma County Water Agency

Opposition

Apartment Association
Apartment Association of Greater Los Angeles
Apartment Association of Orange County
California Apartment Association
California Business Properties Association
California Southern Cities
East Bay Rental Housing Association
Nor Cal Rental Property Association
San Diego County Apartment Association
Santa Barbara Rental Property Association
Utility Conservation Coalition
Utility Management and Conservation Association

Analysis Prepared by: Lisa Engel / H. & C.D. / (916) 319-2085